IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 131 OF 2003.

1. Vaman Raghunath Fallary
   & Sons, a Partnership
   Firm with office near
   UCO Bank, New Market,
   Margao, Goa, represented
   by its partners:
2. Shri Gopal Balkrishna
   Fallary,
3. Shri Vaman Gopal Fallary,
4. Shri Devdatt Gopal Fallary,
5. Shri Chinmay Gopal Fallary,
   all r/o House No. 272, Near
   New Era High School, Vishant
   Road, Margao. ... Petitioners.

Versus

1. State of Goa through its
   Chief Secretary, Panaji.
2. Directorate of Food and
   Drugs Administration
   through its Director,
   near Dempo House, Campal,
   Panaji. ... Respondents.

Mr. M.S. Usgaonkar, Senior Advocate with Mr. Sanjay Sardesai, Advocate for the Petitioners.

Mr. A.N.S. Nadkarni, Advocate General with Ms. S. Sabnis, Additional Government Advocate for the Respondents.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 3rd June 2003.

ORAL JUDGMENT (PER REBELLO, J.)

Rule. Respondents waive service. Heard forthwith.

2. The principal issue as raised in the petition by the petitioners before its amendment was that Notification dated 24th January 2003, issued on behalf

of the State of Goa, under the provisions of the Prevention of Food Adulteration Act, 1954, (hereinafter referred to as 'the Act'), did not apply to the substance known as 'Khaini' and applies only to 'Gutka' and 'Pan Masala'. During the pendency of the petition, the State of Goa has issued a second Notification dated 7th April 2003. By an amendment, that Notification is also sought to be challenged on the grounds which we will advert to later on.

3. Petitioner no. 1 has described itself as a partnership firm of which petitioners 2 to 5 are partners. Pursuant to the Notification issued by the State Government on 24th January 2003 and a subsequent Public Notice, dated 29th January 2003, which was issued in various local newspapers, Food Inspectors from the office of respondent no. 2 went to the premises of the petitioners herein. The petitioners voluntarily surrendered the stocks of 'Gutka', 'Pan Masala' and 'Khaini'. It is the case of the petitioners that they made representations against the taking away of the stocks of 'Madhu Khaini'. A further representation for release was made on 26th February 2003. On failure to do so, the present petition was filed for the reliefs as prayed for initially. Exhibit 'A' to the petition is the panchanama of materials which were surrendered by the petitioners to the Officials of the respondent no.

2. Amongst them are bags and/or pouches of 'Madhu Khaini', which have been described in that panchanama as 'food articles'. The petitioners' case was that 'Khaini' was not included in the Notification issued and consequently the action of the respondents in entering the shop and attempting to seize the articles was illegal.

4. On behalf of the respondents, S.N. Tripathi, working as Director in the Office of the respondent no. 2, has filed an affidavit. It is his contention that by Notification, dated 24th January 2003, the respondent no. 1 has prohibited the sale of Gutka and Pan Masala containing tobacco or not containing tobacco by whatever name called with further directions. It is set out that the Notification was issued in the interest of public health and to prevent especially the school and college going students apart from general public from falling prey to and/or being addicted by these harmful food articles. It has specially set out that consumption of 'Gutka' and 'Pan Masala' can lead to a dreadful disease known as oral submucous fibrosis (OSF). OSF it is pointed out is a pre-cancerous condition linked with use of smokeless tobacco products. OSF leads to stiffening of the mouth and is more difficult to treat than cancer. An individual suffering from OSF is 400 times more prone to develop oral cancer than any normal person. It is

then pointed out that studies have been conducted by experts and found that the use of indigenous tobacco products like snuff, zarda, khaini etc., have resulted in India recording the highest number of oral cancer caused in the world. The ill-effects on health on the members of the public by consumption of Gutka and Pan Masala have reached alarming proportions. It is then pointed out that attending to public health is one of the highest priorities and it is with this view in mind that the Notification was issued. Reliance has been placed on a study conducted by the Indian Council of Medical Research wherein it is shown that every year there are 1.6 lakh new oral cancer cases, 4.5 million cardio-vascular diseases cases and 3.9 million cases of chronic obstructive pulmonary diseases which have been identified as a result of tobacco use. Reference is then made to Article 47 of the Constitution of India which casts a duty on the State to raise the level of nutrition and the standard of living and to improve public health, it being one of the primary duties of the State. It is in these circumstances and considering the obligation cast on the State to ensure the creation and sustaining of conditions, congenial to good health, that the State has issued the Notification prohibiting Gutka and Pan Masala products containing tobacco or not containing tobacco in larger public interest. It is specifically denied that 'Khaini' is neither 'Gutka' nor

'Pan Masala'. It is pointed out that 'Pan Masala' with tobacco have been marketed under several brand names and the most popular amongst them is 'Gutka'. It is then pointed out that the brand 'Madhu Chaap Khaini' has also ingredients amongst them tobacco flakes as contained in 'Gutka' and hence the sale of 'Khaini' comes within the purview of Notification issued on 24th January 2003. It is then pointed out that under these circumstances the relief as prayed for cannot be granted. It is further contended that it is a policy decision of the State and when the issue involves public health, this Court should not extend any reliefs as prayed for by the petitioners.

5. The petitioners have basically formulated their challenges as under:-

(1) That food product Madhu Chaap Khaini is not included in the Order of prohibition dated 24th January 2003 and consequently the action in seizing and/or taking over stocks of Madhu Chaap Khaini is arbitrary or in excess of the powers conferred under Sections 2(v) and 7(iv) of the Act and hence be struck down.

(2) The Notification dated 7th April 2003 is bad in law as the same is vague and devoid of particulars and does not satisfy the requirements of the

provisions of the Prevention of Food Adulteration Act, 1957 and in particular Sections 2(v) and 7(iv). The Notification of 7th April 2003 is also arbitrary and violative of Article 14 of the Constitution of India as there is no designation nor the components of the food articles are indicated and as the particulars have not been given the Notification is liable to be challenged.

6. On behalf of the State Government, apart from the reiteration of the submissions in the affidavit of S.N. Tripathi, a Judgment of a Division Bench of this Court in Shri Venkateshwara Paan Masala Industries Pvt. Ltd. v. Union of India and others, dated 18th/19th September 2002, in Writ Petition No. 2001 of 2002 and other petitions has been relied upon. The learned Advocate General has also made available to us a compilation of articles by experts on the health hazards caused by use of Pan Masala.

7. With the above we shall first deal with the first contention as to whether Khaini was not included in the Notification dated 24th January 2003. There is no dispute that Khaini is for consumption and, therefore is an article of food. There is no further dispute that the Notification has been issued pursuant to the exercise of powers conferred on respondent no. 1 under the provisions of The Prevention of Food Adulteration

Act, 1954 and the Rules made thereunder. It is in this background that the contentions advanced will have to be examined. The relevant part of the preamble of the Notification reads as under:-

> "...And Whereas the Food (Health) Authority of the State of Goa, as stated above, is satisfied that, the consumption of any article of food, containing tobacco or not containing tobacco commonly known as "Gutka" and "Pan Masala" by whatever name called is injurious to health; and is necessary in the interest of public health, to prohibit the sale of article of food containing tobacco or not containing tobacco as "Gutka" or "Pan Masala" by whatever name called under clause (iv) of said section 7...".

The main Notification itself reads as under:-

> " Now, Therefore, I, Shri S.N. Tripathi, Director of the Directorate of Food and Drugs Administration, State of Goa and Food (Health) Authority for the State of Goa, in exercise of the powers conferred by clause (iv) of Section 7 of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 19544), hereby, in the interest of public health, prohibit with effect from 26th January, 2003, the sale of "GUTKA" and "PAN MASALA", containing tobacco or not containing tobacco, by whatever name called, in the State of Goa and accordingly direct that no person shall himself or any person on his behalf, shall manufacture for sale, or store, sell or distribute "GUTKA" or "PAN MASALA", containing tobacco or not containing tobacco, by whatever name called, until further orders."

On a plain reading of the preamble alongwith the

Notification what is clear is that it is not only 'Gutka' or 'Pan Masala' that has been prohibited. What is prohibited is any article of food containing tobacco or not containing tobacco and commonly known as 'Gutka' and/or 'Pan Masala'. That means that an article of food containing tobacco which is used in the manufacture of 'Gutka' or 'Pan Masala' is marked and packed in a different form, for example, in the present case 'Khaini', that it is covered by the Notification. The object behind the Notification is to prevent the use or consumption of tobacco and that would include tobacco related products. It was sought to be contended that the Judgment of the Division Bench of this Court in the case of Venkateshwara Paan Masala Industries Pvt. Ltd. (Supra) has defined what is 'Gutka' and if that is considered then 'Khaini' would not fall under the Notification. We are afraid it is not possible to accept the said contention. The word 'Gutka' is not defined in the Prevention of Food Adulteration Act nor in any dictionary. All that the Division Bench was considering was the arguments advanced. This does not mean that the Notification issued by the respondent no. 2, if the food package containing tobacco is not labelled as 'Gutka' or 'Pan Masala' then it is beyond the Notification. What is material is the ingredients that would go into it. Exhibit 'B' Colly shows the ingredients of Madhu Chhap

khaini contain tobacco flakes, lime, Aromatic Spices, etc. In other words it is clear that the product includes tobacco flakes. Once tobacco is included it would fall within the prohibition.

8. In matters where specially public health is involved, the Court must always take note of the object with which the Notification has been issued. Considering the mandate on the State by Article 47 of the Constitution of India, we may now consider the material placed before us in support of the Notification. In an Article by A.K. Sharma and others, under the title "Haemodynamic Effects of Pan Masala in Healthy Volunteers", the learned authors have observed as under:-

> "... Frequent intake of pan masala over the day can lead to initial periodic rise in BP and ultimately lead to sustained hypertension. Pan masala consumption thus poses significant long-term cardiovascular risk."

In a paper by Asha G. Ramchadrani and others under the title "Evaluation of Carcinogenic/Co-Carcinogenic Activity of a Common Chewing Product, Pan Masala, in Mouse Skin, Stomach and Esophagus", the learned authors have pointed out as under:-

> "... More importantly the findings on

> increased induction of benign and malignant tumours in all 3 target organs suggest that pan-masala use may exert carcinogenic as well as co-carcinogenic influence in habitual users of this product."

In yet another paper by Dr. Kishore Chaudhry, under the title "Health Hazards of Pan Masala with Tobacco", in conclusion, the learned author states that where a study was done of Association of Mainpuri tobacco, as well as mawa chewing, oral submucous fibrosis has also been demonstrated. The product is a mixture of areca nut (95% quantity in the mixture) with tobacco and lime (mawa, and a mixture of areca nut with tobacco (major constituent) and lime (Mainpuri tobacco, are found to be carcinogenic in human beings, it is only imperative a mixture of areca nut (70 to 80% by weight) with tobacco and lime (PM-T) would be carcinogenic to human beings. Thus, the learned author states that it can be concluded that there is sufficient evidence that pan masala containing tobacco is carcinogenic to human beings.

Reliance is also placed on a paper by Soma Babu and others under the title "A Comparative Clinico-Pathological Study of Oral Submucous Fibrosis in Habitual Chewers of Pan Masala and Betelquid" the learned authors in the Abstract pointed out that "Habitual chewing of pan masala/Gutkha is associated with earlier presentation of oral submucous fibrosis

than betelquid use. Factors which may be responsible for these differences are the tobacco contents, the absence of the betel leaf and its carotenes and the much higher dry weight of pan masala/Gutkha.

Such material was considered by the Government in taking a policy decision, to ban tobacco products. That ban is within the realm of the policy decision. There was material before the State Government in issuing the Notification in the interest of the public at large. Once there was prohibition of the use of tobacco, the seizure or surrender by the petitioners of the materials including Madhu Khaini cannot be said to be without the authority of law as it falls within the Notification. All food articles containing tobacco which are meant for human consumption would fall within the Notification as was issued. It is true that in the said Notification by using the expression 'containing tobacco or not containing tobacco' was slightly vague. However, we are not called upon to discuss the same, firstly, because 'Khaini' contains tobacco and secondly, a second Notification has been issued which has cured the object.

Once that be the case the petition as filed normally would have been disposed of. However, in the meantime a second Notification came to be issued which

has also been challenged.

9. The main contention is that the designation nor the components of food articles are specified as to what would constitute or what would fall within the Notification. The relevant portion of the Notification reads as under:-

> " Now therefore, I, Shri S.N. Tripathi Director, of the Directorate of Food and Drugs Administration, Authority for the State of Goa, in pursuance of clause (iv) of section 7 of the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954), hereby, in the interest of public health, prohibit, with immediate effect, the sale of such article of food containing tobacco and/or extract thereof, with any kind of flavours including cardamom, menthol, and/or any kind of sweeteners including sugar, glycerine, glucose, and/or aromatic herbs and spices including dry fruits, silver leaves, saffron, mulethi, sabnermusa and lime, all or any of them by whatever name called, in the State of Goa and further, accordingly direct that no person shall himself or by any person on his behalf, manufacture for sale, or store, sell or distribute such article of food containing tobacco and/or extract thereof, with any kind of flavours including cardamom, menthol, and/or any kind of sweeteners including sugar, glycerine, glucose, and/or aromatic herbs and spices including dry fruits, silver leaves, saffron, mulethi, sabnermusa and lime, all or any of them, by whatever name called, until further orders."

From a reading of the said article what is clear is that what is prohibited is the sale of such

article of food containing tobacco or extract thereof with any kind of flavours including cardamom, menthol or any kind of sweeteners. It is, therefore, clear and there is no doubt whatsoever that the object behind it is to ban tobacco, tobacco extract with any combination. This Notification to our mind is clear and precise. It leaves no ambiguity or doubt of the Government's intention. This Notification in fact corrects the omission in the first Notification. It is, therefore, not possible to accept the contention raised by the petitioners that the designation or ingredient is not known. The Notification is clear and once that be the case, the challenge under Article 14 of the Constitution of India on the ground of arbitrariness cannot be sustained. In our opinion there is no substance in the two grounds of challenge.

10. Having said so, the petition is dismissed. Rule is discharged. In the light of the circumstances, there shall be no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

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